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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 TOSHIBA CORPORATION, No C-05-4016 VRW
12 Plaintiff, Related to Case Nos
13 v C-05-4100 VRW, C-05-4547 VRW,
14 HYNIX SEMICONDUCTOR, INC, et al, ORDER
15 Defendants.

17 On November 17, 2005, defendants Hynix Semiconductor, Inc
18 and Hynix Semiconductor America, Inc (collectively "Hynix") moved
19 to stay the present case. Doc #9. Hynix states that before
20 plaintiff Toshiba Corporation ("Toshiba") initiated this case on
21 October 4, 2005, Toshiba filed a complaint on or about September
22 29, 2005, with the United States International Trade Commission
23 ("ITC"), under section 337 of the Tariff Act of 1930, as amended,
24 19 USC § 1337. Id at 1. Toshiba's complaint requests the ITC to
25 investigate whether Hynix is infringing the same patents at issue
26 in this action. Id.

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United States District Court

For the Northern District of California

1 Based on 28 USC § 1659, Hynix asserts that the present
2 case should be stayed until the ITC concludes its action. That
3 provision provides:

4 In a civil action involving parties that are also
5 parties to a proceeding before the United States
6 International Trade Commission under section 337 of
7 the Tariff Act of 1930, at the request of a party to
8 the civil action that is also a respondent in the
9 proceeding before the Commission, the district court
shall stay, until the determination of the Commission
becomes final, proceedings in the civil action with
respect to any claim that involves the same issues
involved in the proceeding before the Commission, but
only if such request is made within --

10 (1) 30 days after the party is named as a respondent
11 in the proceeding before the Commission, or
12 (2) 30 days after the district court action is filed,
whichever is later.

13 See also Universal Tool & Stamping Co v Ventra Group, 46 USPQ 2D
14 1799, 1800 (ND Ind 1998) ("[I]t is clear that a stay must (the
15 statute says 'shall') be entered since there is no dispute that the
16 claims here and those before the United States International Trade
17 Commission involve the same issues.").

18 Here, Hynix is a named respondent in an action before the
19 ITC. Doc #10, Ex A at 10. And both the ITC proceeding and the
20 present case involve infringement contentions concerning Toshiba's
21 United States Patent Nos 5,150,178; 5,270,969 and 5,517,449. Id at
22 12; Complaint (Doc #1). Moreover, Toshiba does not oppose Hynix's
23 request for a stay (Doc #12), and appeared to concede at a January
24 31, 2006, case management conference that 28 USC § 1659 mandates
25 granting a stay here.

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United States District Court

For the Northern District of California

1 It is unclear, however, whether Hynix's stay request is
2 timely. Hynix's motion was filed on November 17, 2005, more than
3 30 days after both the complaint in the present case and in the ITC
4 action were filed. Nonetheless, Hynix contends that it received
5 notice of the ITC action on November 4, 2005; if this is the
6 operative date on which Hynix was "named" as a respondent, then
7 Hynix's stay request was timely.

8 In any event, it does not matter whether 28 USC § 1659
9 mandates a stay here because the court finds, under its inherent
10 authority, that a stay is appropriate. Rohan ex rel Gates v
11 Woodford, 334 F3d 803, 817 (9th Cir 2003). The power to stay
12 proceedings is incidental to the power inherent in every court to
13 control the disposition of cases with economy of time and effort
14 for itself, for counsel and for litigants. Landis v N Am Co, 299
15 US 248, 254 (1936). Allowing the present case to proceed in
16 parallel to the earlier-filed ITC action creates the risk of
17 inconsistent results between the court and the agency. And because
18 the issues involved in both proceedings are substantially the same,
19 allowing the present case to go forward would waste time and effort
20 for both the court and the litigants. Moreover, the parties appear
21 to agree that a stay is appropriate here. Doc ##9, 12.

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1 Accordingly, the court GRANTS Hynix's motion for a stay
2 and STAYS the present case until the parallel proceedings before
3 the ITC become final. The clerk is DIRECTED to terminate all
4 pending motions. The parties are instructed to notify the court in
5 writing by August 1, 2006, on the status of the ITC proceeding.

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7 IT IS SO ORDERED.

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10 VAUGHN R WALKER

11 United States District Chief Judge

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